



07 AUG 2006

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In re Application of	:	
VALENCIA et al.	:	
Application No.: 10/530,222	:	DECISION ON
PCT No.: PCT/MX02/00098	:	PETITION UNDER
Int. Filing Date: 16 October 2002	:	37 CFR 1.181
Priority Date: None	:	
Attorney Docket No.: MR3269-57	:	
For: GRANULATED FERTILISER	:	
COMPOSED OF MICRONUTRIENTS	:	
AND CLAY	:	

This decision is issued in response to "Request to Withdraw Notification of Defective Response Official Action Dated 20 April 2006 and Issue a New Official Action" filed 26 June 2006, which is being treated as a petition under 37 CFR 1.181 to reset the period for response set in the Notification of Defective Response mailed 20 April 2006.

BACKGROUND

On 16 October 2002, applicants filed international application PCT/MX02/00098, which claimed no priority date. A copy of the international application was received by the United States Patent and Trademark Office from the International Bureau on 29 April 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the international filing date, 16 April 2005.

On 04 April 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an executed declaration; and a translation of the international application.

On 13 September 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring a translation of the international application.

On 22 September 2005, applicants filed a response to the Notification of Missing Requirements indicating that a translation of the international application was submitted on 04 April 2005. Applicants included a postcard receipt dated 04 April 2005 and a copy of the translation of the international application.

On 20 April 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the translation was defective because the number of claims in the International Application and the number of claims in the translation of the international application was not the same.

On 26 June 2006, applicant filed "Request to Withdraw Notification of Defective Response Official Action Dated 20 April 2006 and Issue a New Official Action."

DISCUSSION

A. Request to Reset the Previously Set Response Period

Petitioner states that Notification of Defective Response was not received until 24 May 2006, which was after the response due date. For these situations, the United States Patent and Trademark Office (USPTO) set forth guidelines for restarting the period at 1160 OG 14, which have been incorporated into the MPEP. Section 710.06 of the MPEP states, a petition requesting restarting a previously set response period due to the late receipt of an office action will be granted when:

- (A) the petition is filed within two weeks of the actual receipt date of the office action;
- (B) a substantial portion of the set response period has elapsed as of the date of receipt of the office action; and
- (C) the petition includes: (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address satisfactory evidence of the date of receipt together with a satisfactory statement explaining the evidence is furnished.

In this case, applicants have not acted within the two-week period set forth in the notice. Since the applicant did not act within the two-week period (by 07 June 2006), the period to respond cannot be reset.

Applicants were required to submit a complete response to the Notice of Missing Requirements by 13 November 2005. If applicant elected to use to the provisions under 37 CFR 1.136, applicants would have been required to file a complete response by 13 April 2006. Since applicant's petition to reset the time period set forth in the Notification of Defective Response is being dismissed, the application is abandoned for failure to provide a complete response to the Notification of Missing Requirements dated 13 September 2005.

B. Defective Translation of the International Application

The translation of international application filed on 04 April 2005 and 23 September 2005 is defective. Specifically, the published international application (WO/2004/035507) has 15 claims whereas the English translation of the international application has only 14 claims.

CONCLUSION

For the reasons discussed above, applicant's request restart the previously set response period set in the Notification of Defective Response is **DISMISSED** without prejudice and the application is **ABANDONED**.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." No additional fee is required. Extensions of time under 37 CFR 1.136(a) are permitted.

Applicants may wish to file a Petition under 37 CFR 1.137(a) or (b) requesting that the application be revived. The recommendation to file a petition under 37 CFR 1.181 or 1.137 should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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